S.B. Criminal Misc. Bail Cancellation Application No. 808/2006
(Pawan Gupta Vs. The State of Rajasthan & Anr.)

14.9.2006

Hon'ble Mr. Justice Chatra Ram Jat

Mr. Prahlad Sharma for the petitioner
Mrs. Nirmala Sharma, PP for the State
Mr. R.P. Vijay for the accused respondent

This is an application for cancellation of bail U/s. 439 (2) Cr.P.C. against the order dated 12.1.2006 passed by learned Lower Court, by which the learned lower Court granted the interim bail to the respondent No.2 and sent the alleged forged power of attorney for examination by the F.S.L. and it has been directed that after getting the FSL report if the report comes against the respondent No.2, then after giving 10 days notice, police may arrest the accused-non petitioner No.2. So the petitioner applied for the cancellation of interim bail granted to the accused respondent No.2 U/s. 438 Cr.P.C.

Learned counsel for the petitioner contended

that learned lower court is having no jurisdiction for giving the order of examination of alleged forged document as held by this Court in S.B. Criminal Petition No. 258 of 1996 decided on 24th November, 1997 (Prakash Chandra Vs. State of Raj.) (RLR 1997 (2) page 539) and S.B. Criminal Misc. Petition Nos. 992 & 993 of 1998, decided on 17th November, 1998 Smt. Gatubai Vs. State of Raj. (RLR 1998 (1) Page 304) and thus the order is without jurisdiction and this Court is empowered to cancel that interim bail order because of only the illegality on the point.

Learned opposite counsel vehemently objected and states that as per the leading authority of Gurbaksh Singh Vs. State of Punjab (1980 SC 1632), the Sessions Court and the High Court are competent to grant anticipatory bail U/s. 438 Cr.P.C. and also impose the conditions, as enumerated U/s. 438 Cr.P.C., so the lower Court was competent in passing the anticipatory bail and moreover it has

been directed that after getting the report of alleged forged document from the F.S.L., if the report goes against the accused respondent No.2, police is at liberty to arrest the non petitioner after giving 10 days notice and there is no allegation for misusing the liberty by the non petitioner during these last eight months. The ruling cited in the case of Prakash Chand Vs. State of Rajasthan (supra) is not applicable because the learned lower court has given the option of arresting the non petitioner after receiving the report from FSL and after giving the 10 days notice. Thus it cannot be said that the learned lower court suspended the exercise of statutory power of police to make arrest. Rather the learned lower court specifically allowed the arrest of the non petitioner after receiving the report from FSL and if the report comes against the accused respondent No.2 thereafter on giving 10 days notice, so this ruling is distinguishable and cannot be applied to the facts of the case and the

accused has not misused the liberty, therefore, the application deserves to be dismissed.

After going through the rival submissions and the fact that the learned lower court has given the liberty for arresting the non petitioner after giving notice on receiving the FSL report if that report comes against the accused respondent No.2 and the fact that consideration for granting the bail and cancellation of bail are different, the cancellation of anticipatory bail, already granted, can be ordered only when the accused has interfered with the course of justice by tampering with the evidence or has misused or abused his privilege. The power of cancellation of bail must be exercised with care and circumspection and only in appropriate cases. Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of bail. Where there is no violation of terms of order granting bail / anticipatory bail, the cancellation of bail is not justified.

The Court ordinarily looks for some supervening circumstances, which would reflect that the liberty granted to the accused has been misused. The bail once granted to an accused should not be cancelled in a mechanical manner.

In view of above discussions, this cannot be a case for cancellation of bail, so the application moved on behalf of the petitioner deserves to be dismissed.

In the result, the application moved on behalf of the petitioner for cancellation of bail is dismissed.

(Chatra Ram),J.

DK/-